

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 784

STATE OF NEW JERSEY  
218th LEGISLATURE

DATED: MARCH 20, 2018

SUMMARY

- Synopsis:** Provides gross income tax exclusion for attorney’s fees and costs received in connection with certain unlawful discrimination, unlawful retaliation, and qui tam claims or actions.
- Type of Impact:** Indeterminate annual gross income tax revenue loss (Property Tax Relief Fund).
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate decrease		

- The Office of Legislative Services (OLS) concludes that the enactment of this bill would result in an indeterminate annual decrease in gross income tax revenue by providing gross income tax exclusions for attorney’s fees and costs incurred in connection with certain types of legal action.
- The amount of gross income tax revenue that would be forgone to the Property Tax Relief Fund would vary annually based on a range of factors, such as the amount of money awarded by the courts to victims and private persons, how attorney’s fees are calculated and paid, and the marginal tax rates applicable to such income.
- According to a March 2017 report to the Legislature filed by the Attorney General, \$1.56 million was awarded in Calendar Year 2016 to private persons who brought an action under the “New Jersey False Claims Act.” The report does not specify what amount was paid as attorney’s fees and costs.

BILL DESCRIPTION

This bill provides victims of certain unlawful discrimination or retaliation with gross income tax exclusions for attorney’s fees and costs received in connection with claims or actions for that

discrimination or retaliation. In 2004, Congress enacted the Civil Rights Tax Relief Act, which was designed to eliminate the double taxation of attorney's fees and costs at the federal level to both the attorney who is ultimately paid the fees and the victims of discrimination or retaliation. New Jersey law was not amended when the Congress enacted the Civil Rights Tax Relief Act in 2004. As result, the attorney's fees and costs that victims of unlawful discrimination incurred in connection with such claims are subject to the gross income tax for both the law firm that is ultimately paid the fees and the victim at the State level, although the victim never actually receives the fees.

The bill also provides a gross income tax exclusion for the amount of attorney's fees and costs received by a State taxpayer as part of an award recovered under the federal False Claims Act, the "New Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et seq.), or any other similar qui tam action. A qui tam action permits a private citizen whistleblower to expose evidence of unlawful conduct against the government, generally in connection with fraud perpetrated in the administration of a government program, and sue the wrongdoer on behalf of the government, though the government may ultimately join the action. A whistleblower may, in turn, become eligible for a monetary award that is based on a percentage of the amount recovered. Qui tam proceedings may involve costs incurred by the whistleblower in providing assistance, including but not limited to private attorney's fees, court costs, and payments to other realtors (other private whistleblowers who discover related unlawful conduct) pursuant to a sharing agreement.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the enactment of this bill would result in an indeterminate annual decrease in gross income tax revenues, which would otherwise be deposited into the Property Tax Relief Fund, by providing: (1) victims of certain unlawful discrimination or retaliation with gross income tax exclusions for attorney's fees and costs received in connection with claims or actions for that discrimination or retaliation; and (2) a gross income tax exclusion for the amount of attorney's fees and costs received by a State taxpayer as part of an award recovered under the federal False Claims Act, the "New Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et seq.), or any other similar qui tam action.

The OLS cannot independently estimate the amount of revenue which would be forgone as a result of this bill because the OLS does not have access to data on attorney's fees and costs paid under such circumstances. Furthermore, the amount of gross income tax revenue that would be forgone would vary annually based upon a range of factors, such as the amount of money awarded by the courts to victims and private persons, how the attorney's fees are calculated and paid, and the marginal tax rates applicable to the income addressed by the bill.

For instance, a victim in an unlawful discrimination retaliation action contracts with an attorney who would be entitled to receive attorney's fees equal to one-fourth of any award. The case is settled for \$100,000 and results in \$25,000 in fees to the attorney. Under federal law, the victim would be taxed on the \$75,000, the amount awarded after deducting the attorney's fees,

and the attorney would be taxed on the \$25,000 in fees earned. However, current State law would require the victim to pay gross income tax on the total award of \$100,000, and then the attorney would also be required to pay gross income tax on the attorney's fees of \$25,000. This bill, if enacted, would align current State law with federal law, and as a result, the law firm or attorney who represents the victim would be the single party responsible for paying taxes on the attorney's fees. The difference in tax revenue that would result from the example above would depend on the marginal tax rates applicable to the income under current law and under the bill.

N.J.S.A.2A:32C-7 governs the distribution of proceeds recovered in an action brought by a person under the "New Jersey False Claims Act." If the Attorney General proceeds with an action originally brought by an individual, the court will order the distribution to the individual of at least 15 percent but not more than 25 percent of the proceeds recovered, depending upon the extent to which the individual substantially contributed to the prosecution of the action. If the Attorney General does not proceed with the action, and the individual bringing an action prevails, the individual will receive an amount which the court decides is reasonable. This amount would be not less than 25 percent but not more than 30 percent of the proceeds.

According to a report by the Attorney General, 1.56 million was awarded in Calendar Year 2016 to private persons who brought an action under the "New Jersey False Claims Act." The report does not specify what amount was paid as attorney's fees and costs. Information on the total amount of attorney's fees and costs received by New Jersey taxpayers as part of an award recovered under the federal False Claims Act is not available at this time.

*Section: Revenue, Finance, and Appropriations*

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).